

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
UNITED STATES OF AMERICA )

v. )

DANIEL W. McELROY and )  
AIMEE J. KING McELROY )  
\_\_\_\_\_ )

CASE NO. 05-10019-RGS

**DEFENDANTS, DANIEL W. MCELROY AND**  
**AIMEE J. KING MCELROY MEMORANDUM IN SUPPORT OF THEIR**  
**MOTION FOR A NEW TRIAL**

The Defendants, Daniel W. McElroy and Aimee J. King McElroy, assert as grounds for their Motion for a New Trial the Court's erroneous charge on the "Klein" Conspiracy of Count One.

The Court in its jury charge erroneously characterized the "Klein" Conspiracy as a conspiracy to procure false tax returns. After the defense objected and pointed out that the indictment charged a "Klien" Conspiracy to defraud the United States by impeding and obstructing the lawful functions of the IRS in the assessment and collection of employment and income taxes, the Court agreed that the charge to the jury was wrong.

The Court attempted to correct its charge simply by stating that the government must prove an employment or income tax loss. Further, the Court did not correct the copies of the erroneous charge it provided to the jury that still contained the incorrect language.

In essence, the Court's charge outlined the elements of a crime not charged in the indictment. The Court's attempt to correct the charge compounded the error of what the jury had to find beyond a reasonable doubt on Count One.

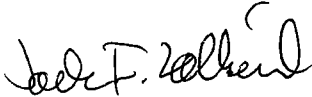
This error went to the heart of the government's case and was not harmless.

The interest of justice require a new trial on this issue.

Respectfully submitted:

**AIMEE J. KING McELROY**

By her attorney,



Jack I. Zalkind (BBO# 538840)

One International Place

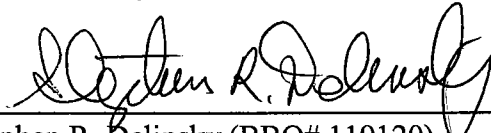
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Respectfully submitted

**DANIEL McELROY,**

By his attorney,



Stephen R. Delinsky (BBO# 119120)

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DATED: March 6, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on 3-6-08

By:

